



Updated Regulations

Bureau of Labor Law Compliance

In Effect: August 5, 2022



Labor Law Enforcement

Prevailing Wage

Minimum Wage

Child Labor

Wage Payment

Apprenticeship
and Training

Seasonal Farm

Medical Pay

Personnel File

Industrial
Homework

Equal Pay

Prohibition of Excessive
Overtime in Health Care (Act
102)

Construction Workplace
Misclassification (Act 72)

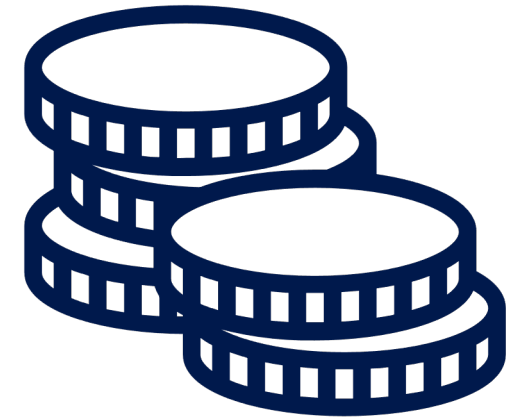
Act 75 E-Verify



Minimum Wage and Overtime

Act of 1968, P.L. 11, No. 5

- The Pennsylvania Minimum Wage Act, as amended in 2006, establishes a fixed Minimum Wage and Overtime Rate for employees in Pennsylvania. It also sets forth compliance-related duties for the Department of Labor & Industry and for employers.
- In addition, the Minimum Wage Act provides penalties for noncompliance.





Overtime Exemptions

- There are categories that qualify for an overtime exemption. When coupled with the salary dollar amount threshold, there are no limits to the number of hours these employees work so as long as the salary is being paid consistently.
- Executives, administrative, and professionals
- This is currently enforced by the federal United States Department of Labor



Tipped Employees

A tipped employee works in an occupation that 'customarily and regularly' receives tips

- The MWL regulations set the amount per month that someone must receive to be considered a tipped worker
- Some examples: Hospitality, catering, restaurants, bartending, salon workers





Minimum Wage Regulation Changes

The new regulation clarifies that an employer can only take a tip credit for employees that make \$135 per month in tips.

- Under federal law and previous PA law, the rate was \$30 a month.
- Since \$135 is a higher standard than federal threshold, the PA requirement will apply.





How the Tipped Wage Works

An employer needs to ensure that all employees receive the Pennsylvania minimum wage, currently \$7.25 an hour.

- If an employees does not meet the definition of a tipped worker and does not receive \$135 per month in tips, the worker does not qualify for the reduced \$2.83 an hour minimum wage.

80/20 Rule

- PA now better aligns with federal regulation on tipped worker duties
- The long-followed standard of the 80/20 rule is now a regulation in Pennsylvania

Regulation permits employees to be a tipped employee as long as that employee does not spend more than 20% of the 7-day previously established workweek performing duties that do not directly generate tips.



Example 1

Sally is a server at a restaurant. She normally works about 35 hours per work week, or 5 hours a day.

- For the previous four weeks, the kitchen staff has been short. Sally has been working up to 2 hours daily doing dishes, helping prep cooks prepare meals, and cleaning facilities. She was doing her server duties for the other 3 hours.
- By week's end, she has worked 21 hours doing server duties and 14 hours doing kitchen duties.
- Since she has worked 40% of the workweek doing non-server duties, Sally must be paid \$7.25 for all hours worked.



Example 2

Bob is a bartender. He has been working around 40 hours a week but has been told that he needs to clean facilities and mop the kitchen floor for the final half hour each workday.

- By week's end, Bob will have worked 3.5 hours doing non tipped work.
- That constitutes 8% of Bob's workweek performing non-tipped duties, therefore Bob can still be paid \$2.83 so as long as he meets other qualifications of a tipped employee as previously defined



Credit Card Deductions

Credit card tip deductions are a common occurrence in the hospitality industry

- Occur when an employer deducts the credit card transaction fee percentage from a tip
- For example, if a server receives a \$20 tip on a credit card, and the fee to the card company is 2%, the employer charges the employee \$.40.

Under the new regulation, this is **not legal** under the Minimum Wage Act.





Service Charges

- Sometimes, a hospitality business will add a “service charge” to a bill.
- These service charges are not tips, sometimes they are used for administrative purposes and in some cases do *not* even go to the employee.

The US DOL has previously stated that employers cannot use revenue derived from service charges to pay tips to employees.



Service Charges Now Regulated

Pennsylvania's new regulation compels an employer that charges for administration of a banquet, special function, or package deal shall notify patrons of the charge by providing notice:

- In a statement or contract with patron and on a menu to the patron
- The notice must state that the charge is for administration and does not include a tip to be distributed to employee
- The bill must contain separate line item for tips
- Employer may distribute service charges to workers but not in the form of a tip.





Tip Pooling

- Tip pooling is not a requirement, but an employer may utilize it as policy
- Employers need to notify tipped workers of tip pooling arrangement at establishment
- Tip pools can include both traditionally tipped and non-tipped occupations, with some exclusions.

Who Must Be Excluded from a Tip Pool:

- Individuals with ownership or partnership interest in the business.
- Employees who meet any part of the executive employee duties test in federal code 29 C.F.R. Part 541.100 (2)-(4).
- If an employer takes a tip credit, it must exclude any employee who does not spend at least 80% of their daily work performing duties that customarily or regularly generate tips.
 - If employer pays everyone in the tip pool the minimum wage, it may include employees who do not spend at least 80% of their daily work performing duties that customarily or regularly generate tips.



Fluctuating Workweek

Pennsylvania has clarified a 'regular rate' through this regulation

- The FLSA and PA MWA permit employers and employees to enter into a “fluctuating workweek” arrangement.
- Under federal law, an employer pays an employee a flat weekly salary regardless of the hours worked in the workweek. Overtime after 40 is entitled to .5 of their regular rate.
- Federal law also allows 'regular rate' to be based on the 40-hour workweek or the total hours worked.

Pennsylvania's regulation change is more protective for workers' rights.

Regular Rate of Pay Updated Definition:

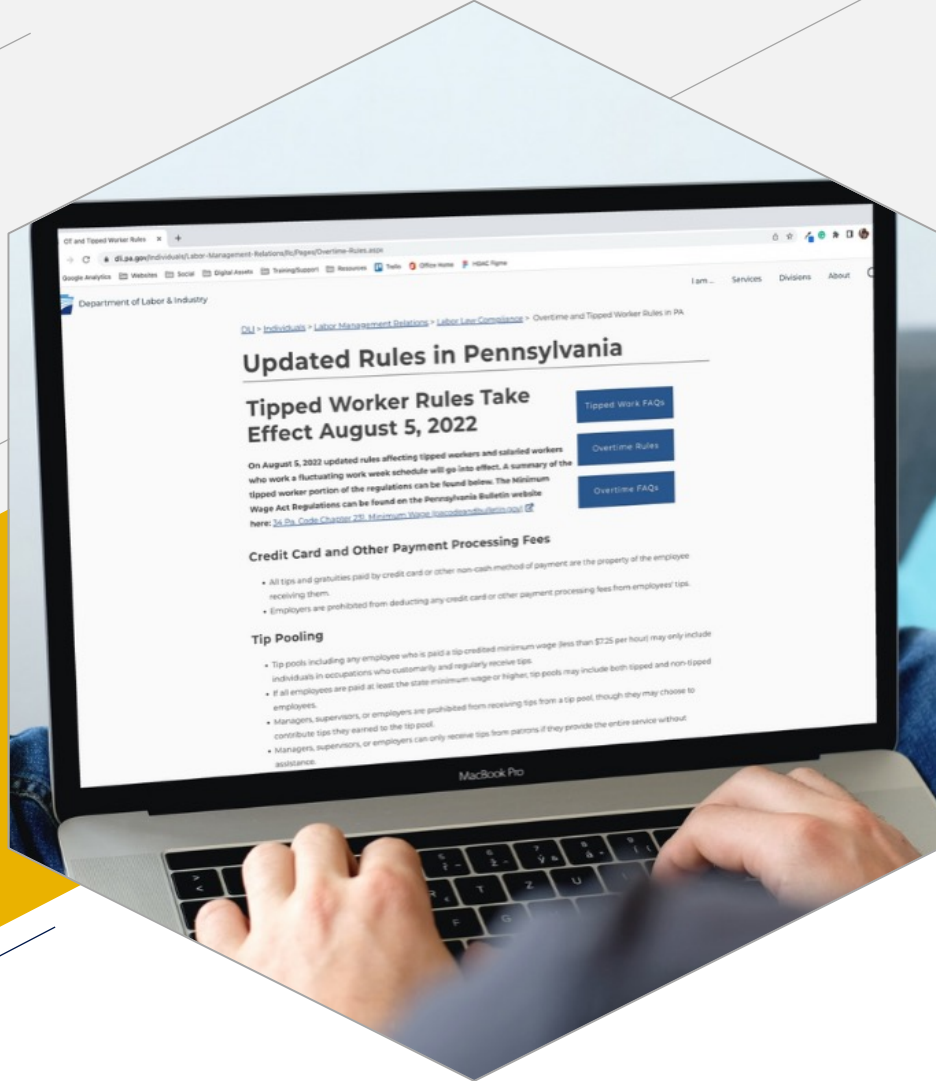
*The regular rate is based on the regular, 40-hour-workweek and **not** the total hours worked including overtime, which may be irregular and inconsistent from week to week.*



PA Regulation Changes

IRRC Approved Proposed Regulations

- Published May 7, 2022
- Effective August 5, 2022



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- FAQs
- Updated Information
- New Posters

All labor law posters, including new minimum wage and overtime publications are available for free on our [Mandatory Postings](#) page.



Complaints & Investigations

- Minimum Wage cases trigger company wide audit.
- If workers are paid, cases are closed, and workers receive back wages.
- If employer does not pay, court action including claims before Magisterial District Judges or higher courts will occur.



District Offices



Altoona District Office

1130 12th Avenue, Suite 200
Altoona, PA 16601
814-940-6224 or
1-877-792-8198



Harrisburg District Office

1301 Labor & Industry Building
651 Boas Street
Harrisburg, PA 17121
717-787-4671 or 1-800-932-0665



Philadelphia District Office

110 North 8th Street, Suite 203
Philadelphia, PA 19107
215-560-1858 or
1-877-817-9497



Pittsburgh District Office

301 5th Avenue, Suite 330
Pittsburgh, PA 15222
412-565-5300 or
1-877-504-8354



Scranton District Office

201 B State Office Building 100
Lackawanna Avenue
Scranton, PA 18503
570-963-4577
or 1-877-214-3962



Contact Us



Bureau of Labor Law Compliance



1-800-932-0665



RA-LI-SLMR-LLC@pa.gov



www.dli.pa.gov